STATE OF MICHIGAN

COURT OF APPEALS

MARY LOUISE DANER and JOHN J. ZOCCOLA, Plaintiffs-Appellees,	UNPUBLISHED May 22, 2001
v PATRICK JOHNSON, Defendant-Appellant.	No. 217966 Macomb Circuit Court LC No. 92-002049-NZ

Before: McDonald, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from a trial court order denying his motion for costs pursuant to MCR 2.405. We affirm.

Plaintiffs, Macomb County Road Commissioners, brought an action against defendant, chairperson of the Board of Commissioners, alleging, *inter alia*, a claim for defamation. After filing his answer and a motion for summary disposition, defendant offered to stipulate to entry of judgment in the amount one dollar ($1.00), inclusive of all interest and costs, for both plaintiffs. Plaintiffs did not respond to the offer, thereby rejecting it. Approximately six months later, defendant made a second offer of judgment in the amount of $1.00 for both plaintiffs. Plaintiffs again did not respond to the offer. Ultimately, the case went to trial and the jury returned a verdict of no cause of action. Defendant moved for costs and attorney fees under MCR 2.405. The trial court denied the motion "in the interest of justice."

The purpose of MCR 2.405 is "to encourage settlement and to deter protracted litigation." *Hamilton v Becker Orthopedic Appliance Co*, 214 Mich App 593, 596; 543 NW2d 60 (1995); *Sanders v Monical Machinery Co*, 163 Mich App 689, 692; 415 NW2d 276 (1987). If a party rejects an offer of judgment and the adjusted verdict is more favorable to the offeror than the average offer, the offeror may recover actual costs from the offeree. MCR 2.405(D)(1). Actual costs are costs and fees taxable in a civil action, plus a reasonable attorney fee. MCR 2.405(A)(6). The trial court has discretion to determine a reasonable attorney fee. *Luidens v 63rd District Court*, 219 Mich App 24, 30-31; 555 NW2d 709 (1996). In the interest of justice, the trial court may refuse to award attorney fees under this rule. MCR 2.405(D)(3).

Whether attorney fees should be denied "in the interest of justice" must be decided on a case-by-case basis. *Lamson v Martin (After Remand)*, 216 Mich App 452, 463; 549 NW2d 878 (1996); *Stamp v Hagerman*, 181 Mich App 332, 339; 448 NW2d 849 (1989). In *Luidens*, *supra*, this Court provided three examples of factors that would constitute "unusual circumstances" under which the "interest of justice" exception might apply: (1) where there is evidence that a party has made a token offer of judgment or a de minimus offer of judgment early for gamesmanship purposes, rather than as a sincere effort at negotiation; (2) when a case involves a legal issue of first impression or an issue of public interest that should be litigated; and (3) where there is evidence of misconduct on the part of the prevailing party. *Id*. at 35-36.

Here, we hold that the trial court did not abuse its discretion in concluding that this case involved issues of public interest.[1] As the trial court observed, while the case itself was not a public interest case, it nevertheless involved issues that were matters of public relevance. The plaintiffs in this case were Macomb County Road Commissioners, and the defendant was the elected chairman of the Board. An underlying dispute in the case concerned whether plaintiffs, as road commissioners, properly received cost-of-living benefit ("COLA") pay at $5.42 per hour, which was the same rate that other county road commission employees received, or whether, as defendant contended, COLA pay for road commissioners was capped at $0.20 per hour, equivalent to nonunion county employees. Another sub-issue that was necessarily fostered by the case, and significant to the citizens and officials of Macomb County, concerned the extent of the chairman's authority to unilaterally carry out an investigation on behalf of the Board of Commissioners and make statements to the media without the approval or knowledge of the Board. We therefore conclude that the trial court's decision to deny costs under MCR 2.405 in the interest of justice was not an abuse of discretion.

Furthermore, although not expressly addressed by the trial court, plaintiffs' claim that defendant's one dollar offer of judgment constituted a de minimus token offer of judgment for gamesmanship purposes is persuasive and further supports the conclusion that a denial of costs was justified in this case in the interest of justice. An appellee need not file a cross appeal in order to argue an alternative basis for affirming the trial court's decision. *Middlebrooks v Wayne County*, 446 Mich 151, 166, n 41; 521 NW2d 774 (1994); *In re Herbach Estate*, 230 Mich App 276, 284; 583 NW2d 541 (1998).

Defendant's offer of judgment of one dollar, inclusive of all interests and costs, for both plaintiffs, was a de minimus offer and does not reflect a sincere effort at negotiation. In the trial court, defendant denied that he was practicing gamesmanship, and indicated that "[n]o reasonable offer would have been accepted." Defendant's statement that no "reasonable" offer would have been accepted undermines his claim that he was not practicing gamesmanship and

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[1] An abuse of discretion occurs when the trial court's decision is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason, but rather of passion or bias." *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999) (citation omitted).

was sincerely negotiating. The fact that defendant filed his one dollar offer of judgment early in the case is also an indication of gamesmanship. *Luidens*, *supra* at 35.

Affirmed.

/s/ Gary R. McDonald
/s/ William B. Murphy
/s/ Patrick M. Meter